

Serial No. 09/633,187 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

REMARKS

This response is intended as a full and complete response to the final Office Action mailed August 13, 2004. In the Office Action, the Examiner notes that claims 1 through 19 are pending, of which all claims are rejected. The Examiner has also noted that the drawings filed on August 2, 2001 have been accepted.

By this response, Applicants have amended claims 8 and 12 to correct typographical errors and to define aspects of the invention more clearly.

In view of the above amendments and the following discussion, Applicants submit that the claims pending in the application are believed to be definite under 35 U.S.C. §112, novel under 35 U.S.C. §102, and nonobvious under 35 U.S.C. §103. Thus, Applicants believe that the application is in condition for allowance.

I. REJECTION UNDER 35 U.S.C. §112

Claim 12 stands rejected under 35 U.S.C. §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. In particular, the Examiner states that there is insufficient antecedent basis for the claim 12 recitation "said remitted compensation."

Applicants have amended claim 12 to correct the dependency onto the proper parent claim that calls for "remitting compensation". Since claim 12 now depends from claim 11, it is submitted that there is sufficient antecedent basis provided for the term "said compensation remitted." Therefore, it is believed that claim 12, as amended, is definite and allowable under 35 U.S.C. §112.

II. REJECTIONS UNDER 35 U.S.C. §102

Claims 8-10, 13-15, and 18-19 stand rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent 6,201,536 issued to Hendricks et al. (hereinafter "Hendricks"). Applicants respectfully traverse the rejection.

Serial No. 09/633,197 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

A. Claims 8-10

Applicants have taught and claimed a method performed by the service provider delivering content from content providers to subscribers in claim 8 as follows:

8. A method, comprising the steps of:

assigning by a service provider to each of a plurality of content providers content management responsibilities for respective service provider resources;

fulfilling subscriber requests for available content stored in said respective service provider resources;

generating usage statistics and providing said usage statistics to at least one content provider; and

adjusting, in response to information provided by said content providers, content stored within said respective service provider resources.

Hendricks discloses a television program delivery system including, in pertinent part, an operations center and a headend, which includes a network manager and a file server. Hendricks's "operations center 202 typically receives television programs from external sources ... [e]xamples of external program sources are sporting events, children's programs, specialty channels, news, advertisements, infomercials or any other program source." (Col. 8, lines 11-16). The operations center then "packages the programs into groups and categories" for delivery to the cable headend 208. (Col. 8, lines 20-21 and 47-50). The cable headend receives the signals for storage in the file server. (Col. 9, lines 50-52). The network manager then "oversees signal reception, processing, storage, and intelligent selection, and distribution of video, audio and data signals to subscribers." (Col. 9, lines 15-18). It also "coordinates and manages file server 215 functions." (Col. 11, lines 48-50).

The system shown by Hendricks is entirely a service provider's system. Hendricks's operations center receives and packages content received from content providers. Control over the content supplied by content providers is exerted almost entirely by the operations center. There is some additional control that is later applied by the network manager. The network manager is not a content provider as defined and disclosed by Applicants. Thus, control over service provider resources by the

Serial No. 09/833,187 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

network manager is still control by the service provider because the network manager is a part of the service provider's system.

At no time is any control over equipment or resources in Hendricks's system given, relinquished, or assigned by the service provider to the content providers as required by Applicants. Hendricks fails to suggest any cooperation between the service provider and the content provider that even remotely hints at assigning content management responsibility or any other kind of responsibility over resources in Hendricks's system to the content providers. Therefore, Hendricks does not teach, show, or suggest the claimed step of "assigning by a service provider to each of a plurality of content providers content management responsibility for respective service provider resources."

Hendricks does disclose that the headend and, particularly, the network manager within the headend perform real-time processing of subscriber requests. *See Hendricks col. 9, lines 30-31.* But Applicants have defined that these requests be fulfilled by "available content stored in said respective service provider resources." This means that the service provider resources in which the content is stored are those for which the content providers have content management responsibilities. Hendricks has not stored content in a respective service provider resource, that is, in any resource for which the content provider has been assigned content management responsibility by the service provider. This is because Hendricks has not assigned content management responsibility to any content provider. In Hendricks's system, there are no respective service provider resources. Hence Hendricks's system cannot have content stored in respective service provider resources because they do not exist in the Hendricks system. As a result, Hendricks does not teach, show, or suggest all the limitations present in the claimed step of "fulfilling subscriber requests for available content stored in said respective service provider resources."

Hendricks does disclose that the network manager may "compile programs watched information." (Col. 9, line 29). This information may be stored in the databases associated with the network manager. (Col. 12, lines 39-49 and lines 56-61). But it is Hendricks's network manager within the service provider system that uses this stored information. Contrary to the Examiner's assertion, Hendricks fails to provide any

Serial No. 09/633,187 (Atty. Dkt. No. 5EDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

express or implied teaching that either the network manager or the service provider system shares this information with the content provider. In contrast, Applicants have defined a method in which usage statistics are generated and are then provided to the content providers by the service provider. Therefore, Hendricks does not teach, show, or suggest all the limitations present in the claimed step of "generating usage statistics and providing said usage statistics to said at least one content provider."

Hendricks does not disclose the transfer of "information", excluding content itself, by the content providers to the service provider. Even if information in its broadest sense is interpreted to include content requested by and downloaded to the service provider, Hendricks's system still does not have content stored in respective service provider resources, as already stated above, because Hendricks has not assigned content management responsibility for service provider resources to any content provider. Therefore, Hendricks does not teach, show, or suggest all the limitations present in the claimed step of "adjusting, in response to information provided by said content providers, content stored within said respective service provider resources."

Since the Hendricks reference does not teach, show, or suggest each and every step of the unique method claimed by Applicants, it is believed that independent claim 8 is not anticipated by the Hendricks reference. Therefore, it is believed that claim 8 is allowable under 35 U.S.C. §102.

Claims 9 and 10 depend directly from claim 8 and incorporate all the limitations thereof. For all the reasons discussed above with respect to claim 8, it is submitted that the unique steps defined in claims 9 and 10 are not taught, shown or suggested by Hendricks.

In addition, claim 10 requires that content-centric data be provided to the at least one content provider. As described above, Hendricks maintains all data within his service provider system. There is no teaching or remote suggestion that the data is provided outside the Hendricks system to the content providers. As a result, this unique step in Applicants' claim 10 is also not taught, shown or suggested by Hendricks.

Since the Hendricks reference does not teach, show, or suggest each and every step of the unique method claimed by Applicants, it is believed that claims 9 and 10 are

Serial No. 09/633,197 (Atty. Dkt. No. 8EDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

not anticipated by the Hendricks reference. Therefore, it is believed that claims 9 and 10 are allowable under 35 U.S.C. §102.

B. Claims 13, 14, 15, 18, and 19

Applicants have defined an apparatus in a content distribution network coupled to both subscribers and content providers in amended claim 13 as follows:

13. *Apparatus coupled to a plurality of subscribers and to content suppliers, the apparatus comprising:*
- a controller for distributing video assets; and*
 - a server complex comprising a plurality of partitions, each of said partitions storing video assets provided by respective content suppliers;*
 - said content suppliers adapting content, including video assets, stored in said respective partitions in response to usage data provided by said controller.*

Hendricks teaches a headend that includes a network manager, a file server, and a number of databases. But Hendricks does not teach Applicants' unique storage element "comprising a plurality of partitions, each of said partitions storing video assets provided by respective content suppliers."

Hendricks has no express or implied teachings about storage partitions in any system element. Moreover, Hendricks offers no teachings about service provider resources, let alone partitioned service provider resources, being associated with respective content suppliers. Contrary to the Examiner's support for partitions allegedly in Hendricks's Fig. 3b, it is clear that Fig. 3b is not a set of partitions for storing video assets from the content suppliers. Instead, as explained in Hendricks, Fig. 3b is "a diagram that shows the overall structure of the processing levels performed by the network manager." (Col. 5, lines 55-56). While Hendricks does show multiple types of video and other information being received by the headend, Hendricks fails to show that they are stored in partitions wherein each partition stores the video assets associated with a respective content supplier. Hendricks does not even hint at a system wherein even one partition exists and is assigned to a respective content supplier. No such partitioning is taught by Hendricks for any part of the headend or the system. Thus, Hendricks does not teach, show, or suggest all the limitations present in the claimed

Serial No. 09/833,197 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

element of "a server complex comprising a plurality of partitions, each of said partitions storing video assets provided by respective content suppliers."

In the remarks presented for claim 8, it was already discussed that Hendricks fails to provide any express or implied teaching that either the network manager or the service provider system shares usage or any other information with a content supplier. There is no teaching or remote suggestion that information is provided outside the system to the content suppliers. Usage information is stored in Hendricks's database and it is never shared outside that system. There is also no teaching in Hendricks that content suppliers adapt content, including video assets, based on any usage type information supplied to them because, in fact, none is supplied to the content suppliers. When a subscriber requests content that is not in the service provider's system, a request goes out to the content supplier to send the requested content. In direct response to that request, the content supplier sends the content. There is no adaptation of content in this knee-jerk reaction and surely there is no adaptation in response to usage data because no usage data is sent to the content supplier. In addition, it has been discussed above that there are no respective partitions because Hendricks does not create partitions and associations of partitions with the content suppliers. Therefore, Hendricks does not teach, show, or suggest the claimed limitation of "said content suppliers adapting content, including video assets, stored in said respective partitions in response to usage data provided by said controller."

Since the Hendricks reference does not teach, show, or suggest each and every step of the unique method claimed by Applicants, it is believed that independent claim 13 is not anticipated by the Hendricks reference. Therefore, it is believed that claim 13 is allowable under 35 U.S.C. §102.

Claims 14, 15, 18 and 19 depend either directly or indirectly from claim 13 and incorporate all the limitations thereof. For all the reasons discussed above with respect to claim 13, it is submitted that the unique elements defined in claims 14, 15, 18 and 19 are not taught, shown or suggested by Hendricks.

Claim 14 requires that content suppliers provision the partitions according to controller-defined rules. As described above in reference to respective server complex partitions, Hendricks has neither partitions nor partitions associated with respective

Serial No. 09/833,197 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

content suppliers. At col. 35, lines 5-20 asserted by the Examiner in support of Hendricks's alleged teaching of rules, the section and the reference as a whole are devoid of any teaching about rules defined by a controller for such storage. As a result, this unique limitation in Applicants' claim 14 is also not taught, shown or suggested by Hendricks.

Claim 15 further defines the elements of the rules. This unique limitation in Applicants' claim 14 is also not taught, shown or suggested by Hendricks requires that content suppliers provision the partitions according to controller-defined rules. As described above, Hendricks has no partitions and has no partitions associated with respective content suppliers. Hendricks does not disclose either rules generally or rules of storage in particular defined by a controller for such storage. Even the Examiner realizes that Hendricks does not teach, expressly or impliedly, the specific elements defined by the rules in claim 15 because the Examiner has resorted to stating that these teachings are "inherently" shown in Hendricks. As a result, this unique limitation in Applicants' claim 15 is also not taught, shown, or suggested by Hendricks.

Claim 18 requires that content suppliers adapt the content stored in the respective partitions in response to content-centric data provided by the controller. As described above, Hendricks has neither partitions nor partitions associated with respective content suppliers. In the remarks presented for claim 8, it was already discussed that Hendricks fails to provide any express or implied teaching that either the network manager or the service provider system collects or shares content-centric data or any other information with a content supplier. There is no teaching or remote suggestion that information is provided outside Hendricks's system to the content suppliers. There is also no teaching in Hendricks that content suppliers adapt content based on any content-centric information because there is no content-centric data supplied to the content suppliers and to which content suppliers can respond. When a subscriber requests content that is not in the service provider's system, a request goes out to the content supplier to send the requested content. In direct response to that request, the content supplier sends the content. There is no adaptation of content in this referred request and surely there is no adaptation in response to content-centric

Serial No. 09/633,197 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

data because none is sent. Therefore, Hendricks does not teach, show, or suggest the claimed limitation of claim 18.

Claim 19 requires that the size of each partition be increased or decreased in response to the usage data. As described above, Hendricks has no partitions. Hendricks does not describe any interaction between the amount of storage and the subscriber usage data stored in his database. As a result, this unique limitation in Applicants' claim 19 is also not taught, shown or suggested by Hendricks.

Since the Hendricks reference does not teach, show, or suggest each and every step of the unique method claimed by Applicants and for all the reasons presented above with respect to the independent base claim 13, it is believed that claims 14, 15, 18, and 19 are not anticipated by the Hendricks reference. Therefore, it is believed that claims 14, 15, 18, and 19 are allowable under 35 U.S.C. §102.

III. REJECTION UNDER 35 U.S.C. §103

A. Rejection under Hendricks and Lewis

Claims 1-7, 11-12 and 16-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hendricks in view of U.S. Patent Application Publication No. 2003/0040962A1 of Lewis (hereinafter "Lewis"). This rejection is respectfully traversed.

Applicants have taught and claimed a method performed by the service provider delivering content from content providers to subscribers in independent claims 1 and 8 as follows

1. A method, comprising the steps of:

establishing by a service provider a resource lease with each of at least one content provider, each content provider storing content within said leased resource at at least one service provider location;

fulfilling subscriber requests for available content stored at the at least one service provider location;

generating usage statistics;

providing said usage statistics to said at least one content provider, and adjusting the content stored in said leased resource according to said at least one content provider.

and,

8. A method, comprising the steps of:

Serial No. 05/633,197 (Atty. Dkt. No. SEDW/284)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

assigning by a service provider to each of a plurality of content providers content management responsibilities for respective service provider resources;

fulfilling subscriber requests for available content stored in said respective service provider resources;

generating usage statistics and providing said usage statistics to said at least one content provider; and

adjusting, in response to information provided by said content providers, content stored within said respective service provider resources.

In addition, Applicants have defined an apparatus in a content distribution network coupled to both subscribers and content providers in amended claim 13 as follows:

13. Apparatus coupled to a plurality of subscribers and to content suppliers, the apparatus comprising:

a controller for distributing video assets; and

a server complex comprising a plurality of partitions, each of said partitions storing video assets provided by respective content suppliers;

said content suppliers adapting content, including video assets, stored in said respective partitions in response to usage data provided by said controller.

Hendricks has been discussed above in Sections II.A and II.B. Those remarks will be incorporated herein in their entirety, but will not be entirely repeated for the sake of brevity. Nowhere does Hendricks teach establishing a resource lease with the content providers. Nowhere does Hendricks teach providing usage statistics to the content providers. Nowhere does Hendricks teach that content is adjusted in the leased resource by the content provider. Finally, nowhere does Hendricks teach the formation of partitions or the association of storage partitions with the respective content providers.

Lewis discloses a system including an account transaction server (ATS) in communication with a data management system and audio/video processor recorder-player (VPR/DMS). The VPR/DMS is located at a subscriber site and includes a memory section (Lewis element 14) that is partitioned for various providers. Although the VPR/DMS is a subscriber device, space in the memory section of a VPR/DMS may be leased, rented, reserved, or purchased from a host of entities including the subscriber for advertising usage. See paragraph 0186. The VPR/DMS also stores subscriber selected content for immediate playing or later playback. In combination with

Serial No. 09/633,197 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

a so-called user suitability criteria and content filter/editor, set manually by the subscriber and not related to usage statistics, the VPR/DMS can decide which stored advertising content can be pushed from the VPR/DMS memory section to the subscriber. *See paragraph 0189.*

It is important to note that Lewis's VPR/DMS is a subscriber device. It is not a service provider's device such as a headend or an operation center. It is not coupled to a plurality of subscriber devices and a plurality of content providers like the service provider system. It is not located at either the service provider location. It is at a subscriber location.

So on a reading of both Hendricks and Lewis, where it is abundantly clear that Hendricks has no motivation to enter into some formalized storage arrangement with each content provider, how can one assume that a feature of Lewis's subscriber device should be imported into a part of Hendricks's service provider system? Such a combination can only arise as a result of hindsight in which Applicants' own teachings are improperly used against Applicants' claims. It is only Applicants, not Hendricks and not Lewis, separately or in combination, who have shown the use of a lease for the service provider's resource with a content provider. As a result, the teachings of Lewis and Hendricks are inapposite to each other and there is no motivation to combine the service provider system of Hendricks with the subscriber arrangement of Lewis as suggested in the Office Action except through the use of hindsight, which is inappropriate.

Even if it were proper to combine these references, the resulting combination would not result in Applicants' claimed method and apparatus. Since Hendricks teaches the connection of his headend system to set top terminals (e.g., elements 220 in Hendricks's Fig. 1, or elements 290 in Figs. 4 and 8, or elements 310 in Fig. 5 and 8, or elements 314 in Fig. 6a and 8, or elements 700 in Fig. 7 and 8), the teachings by Lewis about the subscriber's VPR/DMS would be at best expected to be used to modify Hendricks's subscriber device, namely, the set top terminal, not his headend system. There is no motivation provided by either Lewis or Hendricks or any other prior art reference to utilize the VPR/DMS functionality in the headend system or any other part

Serial No. 09/633,197 (Atty. Dkt. No. SEDN264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

of the service provider system. Thus, the combined references of Lewis and Hendricks fail to teach, show, or suggest:

- A leased resource at the service provider location or any activity such as adapting content related to a leased resource (Claim 1);
- Assignment of content management responsibilities to content providers for respective service provider resources or any activity such as adapting content related to respective service provider resources (Claim 8); and
- The existence of partitions for storing video assets in a server complex, wherein the partitions are individually associated with respective content suppliers, or any activity such as adapting content related to respective partitions in response to data supplied by the service provider's controller (Claim 13).

In light of the reasons presented directly above and in Section II of these remarks particularly with respect to independent claims 8 and 13, it is submitted that Applicants' claimed invention would not have been obvious to a person of ordinary skill in the art upon a reading of Hendricks and Lewis, alone or in combination, at the time Applicants' invention was made. As a result, claims 1, 8, and 13 are believed to be allowable under 35 U.S.C. §103.

Claims 2-7 depend either directly or indirectly from independent claim 1 and add further limitations to the method defined in claim 1. Claims 11-12 depend either directly or indirectly from independent claim 8 and add further limitations to the method defined in claim 8. Claims 16-17 depend directly from independent claim 13 and add further limitations to the apparatus defined in claim 13. For the reasons set forth above with respect to independent claims 1, 8, and 13, Applicants submit that dependent claims 2-7, 11-12 and 16-17 are not obvious in view of Hendricks and Lewis. Therefore, claims 2-7, 11-12, and 16-17 are believed to be allowable under 35 U.S.C. §103.

B. Rejection under Hendricks and Chernock

The Examiner has rejected claims 1, 4 and 16 under 35 U.S.C. §103(a) as being unpatentable over Hendricks in view of U.S. Patent 6,772,209 issued Chernock et al. (hereinafter "Chernock"). Applicants respectfully traverse the rejection.

Serial No. 09/633,197 (Atty. Dkt. No. SEDN/284)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

Claim 4 depends directly from claim 1 and claim 16 depends indirectly from independent claim 13. For at least the reasons discussed above in Section III.A with respect to independent claims 1 and 13, it is submitted that Applicants' invention as defined in dependent claims 4 and 16 would not have been obvious to a person of ordinary skill in the art upon a reading of Hendricks or Hendricks and Lewis at the time Applicants' invention was made.

Chernock discloses a network of nodes for distributed hierarchical broadcast in which data content is distributed to the nodes and storage of the content is managed remotely. Chernock clearly discloses leasing in the section highlighted by the Examiner, but that leasing is identical to the leasing scenario presented by Lewis. That is, Chernock discloses leasing of storage in a subscriber's set top terminal. It is not leasing of a resource at at least one service provider location or of server complex partitions as claimed by Applicants and as discussed above in Section III. Thus, the combination of Hendricks and Chernock fails to make obvious the invention defined in Applicants' claims 1 and 16.

As correctly pointed out by the Examiner, neither Hendricks nor Chernock teach the remittance of compensation to the content provider. So the Examiner has resorted to the use of Official Notice to support a teaching of remitting compensation defined in Applicants' claim 4. But reliance on Official Notice is misplaced because the step on which the notice is based is taken out of context. In claim 4, Applicants call for "remitting compensation to said at least one content provider in response to said usage statistics." This is a remittance to the content provider based on the usage statistics compiled by the service provider and supplied to the content provider. Neither Hendricks nor Chernock teach, show, or suggest:

- Remitting anything to a content provider;
- Basing a remittance on usage statistics; or
- Even providing usage statistics to a content provider (Claims 1 and 4).

Thus, the combination of Hendricks and Chernock, with and without the use of Official Notice, fails to make obvious the invention defined in Applicants' claims 1 and 4.

In light of the reasons presented above in this section and in Sections II and III.A with respect to Hendricks and Hendricks and Lewis, it is submitted that Applicants'

Serial No. 09/633,197 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

claimed invention would not have been obvious to a person of ordinary skill in the art upon a reading of Hendricks and Chernock, separately or in combination, at the time Applicants' invention was made. As a result, claims 1, 4 and 16 are believed to be allowable under 35 U.S.C. §103.

IV. THE ADDITIONAL CITED PRIOR ART

The prior art references made of record, but not applied, have been noted and reviewed by Applicants' representative. However, it is believed that the secondary references are no more that cumulative over the Applicants' disclosure than the references cited and applied in the Office Action. Therefore, Applicants' representative believes that a detailed discussion of these references is not necessary for a full and complete response to this Office Action. Since these references were not applied against the claims, it is assumed that the Examiner concurs in this viewpoint.

In light of the review of these references by Applicants' representative, it is believed that Applicants' claimed invention would not have been obvious to one having ordinary skill in the art upon a reading of cited references of Downs, Hendricks ('548), Wachob, and Henderson, separately or in combination at the time Applicants' invention was made. Therefore, it is submitted that the claims as presented are allowable over the cited references.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants believe that this application is in condition for allowance. Entry of this amendment, reconsideration of this application, and allowance are respectfully solicited.

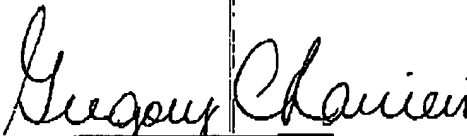
If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Gregory C. Ranieri, Esq. at (732) 530-9404 so that

Serial No. 09/633,197 (Atty. Dkt. No. SEDN/264)
Amendment Dated October 13, 2004
Reply to Office Action of August 13, 2004

appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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